

## ***Legal Considerations***

LCFS Sustainability Workgroup Meeting

(For discussion purposes)

6/16/10

## ***Approaches to Achieve Sustainability***

- Voluntary certification
  - Widely embraced
  - Needs to include incentives
- Exclusion of certain sources of feedstocks
  - EU: highly biodiverse land
  - USA EISA: federal forestlands, old-growth, imperiled

## ***Potential Domestic Bases for Challenges***

- Federal preemption
  - EISA preempts states from acting alone
- Dormant clause
  - Cannot discriminate against out-of-state competition in favor of local interests
  - Must not unduly burden interstate commerce

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## ***Foreign Basis: World Trade Organization***

- Cannot treat imports less favorably than domestic products
- Cannot pose barriers to trade

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## *Conclusions*

- Keep in mind potential legal constraints when considering framework and enforcement of provisions
- Legal experts (and courts) are working on these issues today
- Let's not be too timid

